

MINUTES OF THE REGULAR MEETING OF MAY 21, 2015

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 21, 2015 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. Rodney Smith, Mr. I.G. Burton, III and Mr. Martin Ross with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director and Ms. Janelle Cornwell – Planning and Zoning Manager.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Agenda as amended by deletion of Other Business item Smithfield Acres. Motion carried 4 – 0.

Motion by Mr. Ross, seconded by Mr. Burton, and carried unanimously to approve the Minutes of May 7, 2015 as amended. Motion carried 3 – 0, with Mr. Smith not voting.

OLD BUSINESS

C/Z #1771 – B. Ray Investments, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from AR-1 (Agricultural Residential District) to a CR-1 (Commercial Residential District) for a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 2.062 acres, more or less. The property is located east of U.S. Route 13 (Sussex Highway) 0.2 mile north of Road 583 (Adams Road) (911 Address: None Available) Tax Map I.D. 530-14.00-15.00.

The Commission discussed this application.

Mr. Burton stated that he would move that the Commission recommend approval of Change in Zone #1771 for B. Ray Investments, LLC for a change in zone from AR-1 to CR-1 based upon the record made during the public hearing, and for the following reasons:

- 1) The property is located along U.S. Route 13 (Sussex Highway) in an area that is basically surrounded by commercial uses and zonings. This location is appropriate for CR-1 zoning.
- 2) Surrounding uses include the Delaware Electric Cooperative across U.S. Route 13, several business and commercial uses to the north and south of the site, and some additional conditional uses. The rezoning to CR-1 and the permitted uses in that zone are compatible with the surrounding properties.
- 3) CR-1 Zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide for a wide variety of commercial and service activities generally serving a wide area, and that such uses should be located along existing major thoroughfares where a general mixture of commercial and service activities now exist. In

this case, the rezoning along U.S. Route 13 falls within the stated purposes of the CR-1 District.

- 4) The use will not adversely affect neighboring properties or area roadways.
- 5) The applicant will be required to meet or exceed all DelDOT requirements associated with any permitted use of the property.
- 6) No parties appeared in opposition to the application.

Motion by Mr. Burton, seconded by Mr. Ross, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 3 – 0, with Mr. Smith not voting since he was not present during the public hearing.

PUBLIC HEARING

Mr. Robertson described how the public hearings are processed.

C/Z #1772 – Sussex Ventures, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from AR-1 (Agricultural Residential District) to a CR-1 (Commercial Residential District) for a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 2.33 acres, more or less. The property is located east of U.S. Route 13 (Sussex Highway) 995 feet south of Road 482 (Boyce Road) (911 Address: None Available) Tax Map I.D. 132-12.00 112.00 and 112.05.

The Commission found that the Applicants provided a survey of the property proposed for rezoning.

The Commission found that on December 11, 2014 DelDOT provided comments in the form of a letter and Support Facilities Report referencing that the Current Level of Service of U.S. Route 13 will not change as a result of this application and that the Department cannot predict the site's trip generation with enough accuracy to make a Traffic Impact Study useful; that the Department recommends that this rezoning application be considered without a Traffic Impact Study and that the need for a Traffic Impact Study be evaluated when a subdivision of land development plan is proposed; that the property, being adjacent to U.S. Route 13 is subject to the Department's Corridor Capacity Preservation Program; that the goal of the Program is to maintain capacity of the existing highway; and that the property is located in a Level 2 Investment Area according to the State Strategies where State policies will promote efficient orderly development.

The Commission found that on May 18, 2015 the Sussex Conservation District provided comments in the form of a Memorandum referencing that the developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; that no storm flood hazard area is affected; and that no tax ditch is affected.

The Commission found that on May 19, 2015 the County Engineering Department Utility Planning Division provided comments in the form of a Memorandum referencing that the site is

located in the Western Sussex Planning Area #3; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County has a schedule to provide sewer at this time; and that a concept plan is not required.

Mr. Wheatley recluses himself from the public hearing.

The Commission found that Don Ward and Drew Ward were present on behalf of Sussex Ventures, LLC and stated in their presentation and in response to questions raised by the Commission that they purchased the property in October 2014; that U.S. Route 13 is a major arterial roadway; that a portion of the property is being tilled and the wooded portion is being cleared; that the UTZ warehousing project to the rear crosses the property thru and easement; that most of the area zoning is commercial; that they feel that this rezoning is an infill between other commercial zoned properties; that according to the Comprehensive Land Use Plan the site is located within a Town Center Area; that they have spoken to their neighbors and heard no objections; that there should not be any adverse impact on the area; that an off-premise billboard exists on the site; that they are considering building a self-storage facility on the site; and that access to the site will be at the existing easement location.

The Commission found that there were no parties present in support of or in opposition to the application.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Ross stated that he would move that the Commission recommend approval of Change in Zone #1772 for Sussex Ventures, LLC for a change in zone from AR-1 to CR-1 based upon the record made during the public hearing, and for the following reasons:

- 1) The property is located along U.S. Route 13 (Sussex Highway) in an area that is basically surrounded by commercial uses and zonings. This location is appropriate for CR-1 zoning.
- 2) Surrounding uses include an UTZ Potato Chip distribution center, several business and commercial uses to the north and south of the site, and some additional conditional uses. The rezoning to CR-1 and the permitted uses in that zone are compatible with the surrounding properties. This is basically an infill rezoning.
- 3) CR-1 Zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide for a wide variety of commercial and service activities generally serving a wide area, and that such uses should be located along existing major thoroughfares where a general mixture of commercial and service activities now exist. In this case, the rezoning along U.S. Route 13 falls within the stated purposes of the CR-1 District.
- 4) The use will not adversely affect neighboring properties or area roadways.
- 5) The applicant will be required to meet or exceed all DelDOT requirements associated with any permitted use of the property.
- 6) No parties appeared in opposition to the application.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 3 – 0, with Mr. Wheatley abstaining since he did not participate in the public hearing.

C/Z #1773 – Ernest and Donna DeAngelis

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from AR-1 (Agricultural Residential District) to a CR-1 (Commercial Residential District) for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 9.541 acres, more or less. The property is located south of Route 9 (Seashore Highway) 800 feet west of Road 262 (Fisher Road) (911 Address: None Available) Tax Map I.D. 235-30.00-53.00.

The Commission found that the applicants submitted a survey and site plan for this application. The site plan represents proposed self-storage facilities, shop space and some retail.

The Commission found that the applicants provided an Exhibit Packet on May 11, 2015 which includes a survey and aerials, a reference to State Law, a reference to County Law, the portion of the Tax Map of the area indicating the zoning in the area, a copy of the Future Land Use Map from the Sussex County Comprehensive Plan 2008, a copy of the description of the Developing Area from the Comprehensive Plan 2008, a short description of the U.S. Route 9 improvement project, a copy of a letter from DelDOT, dated November 6, 2014 and that rezoning application, a copy of the site plan proposed, a copy of letter from DelDOT dated February 16, 2015 with attachments from Tim Willard, Esquire, a copy of Ordinance No. 2351 for the approval of the Phillip Cross and Prentice Watkins for C/Z #1744, a copy of the Commission Minutes for February 27, 2014 referencing C/Z #1744, and suggested proposed Findings of Fact for consideration.

The Commission found that on November 6, 2014 DelDOT provided comments in the form of a letter and Support Facilities Report referencing that the Department cannot predict the site's trip generation with enough accuracy to make a Traffic Impact Study useful; that the Department recommends that this rezoning application be considered without a Traffic Impact Study and that the need for a Traffic Impact Study be evaluated when a subdivision or land development plan is proposed.

The Commission found that on May 18, 2015 the Sussex Conservation District provided comments in the form of a Memorandum referencing that the developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; that no storm flood area is affected; that the scope of the project may dictate the need for off-site drainage improvements; that once the project is underway there will probably be a need for some on-site drainage improvements; and that no tax ditch is affected.

The Commission found that on May 19, 2015 the County Engineering Department Utility Planning Division provided comments in the form of a Memorandum referencing that the site is located in the North Coastal Planning Area; that conformity to the North Coastal Planning Study

will be required; that the proposed use is not in an area where the County has a schedule to provide sewer at this time; and that a concept plan is not required.

The Commission found that Ernest DeAngelis was present with Tim Willard, Esquire of Fuqua, Yori & Willard, P.A. and stated in their presentation and in response to questions raised by the Commission that the site is bounded by Route 9 to the north, a Delmarva Power electrical right-of-way and powerlines to the east, a railroad to the south, and CR-1 Commercial Residential zoning to the west (the Veggie Shack); that Mr. Willard summarized the Exhibit Packet; that the commercial uses on the south side Route 9 include the Veggie Shack, the Preachtree Rehabilitation facility, the Donut Connection, warehousing and offices, etc.; that the commercial uses to the north side of Route 9 include service uses, auto sales, auto repair, office, antiques, etc.; that the Comprehensive Land Use Plan depicts the site in a Developing Area, a growth area, where light commercial uses should be allowed; that the applicants intent is to create a self storage facility with some contractor shops and storage; that Mr. Willard assumed that Breakwater Lane was a private street; and that this site was originally proposed for a subdivision, which did not develop.

Mr. Lank advised the Commission that Breakwater Lane is a private street serving a few lots and was developed by the Bailey Maull family.

The Commission found that there were no parties present in support of or in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Burton stated that he would move that the Commission recommend approval of Change in Zone #1773 for Ernest and Donna DeAngelis for a change in zone from AR-1 Agricultural Residential to CR-1 Commercial Residential based on the record made during the public hearing and for the following reasons:

- 1) The property fronts on Route 9, and is surrounded on two (2) sides by powerlines and a railroad right-of-way. The other boundary is CR-1 Commercial Residential that was recently approved by the County. CR-1 zoning is appropriate in this location.
- 2) CR-1 zoning is appropriate in this general area of Route 9, where other business and commercial uses and zoning exist.
- 3) The property is primarily in a Developing Area according to the Sussex County Comprehensive Plan. CR-1 is appropriate in this Area according to the Plan.
- 4) No parties appeared in opposition to this application.
- 5) The change in zone will not adversely affect neighboring properties or roadways.

Motion by Mr. Burton, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0.

C/Z #1774 – John R. and Susan K. Eisenbrey

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from AR-1 (Agricultural Residential District) to a CR-1 (Commercial Residential District) for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 31,200 square feet, more or less. The property is located south of Lewes Georgetown Highway (Route 9) 0.7 mile east of Route 5 at Harbeson (911 Address: 26822 Lewes Georgetown Highway, Harbeson) Tax Map I.D. 235-30.00-58.02 (part of).

The Commission found that the applicant submitted a survey/site plan with their application, and that this proposal is for an expansion of an existing commercial site.

The Commission found that on January 23, 2015 DelDOT provided comments in the form of a letter and Support Facilities Report referencing that the Department cannot predict the site's trip generation with enough accuracy to make a Traffic Impact Study useful; that the Department recommends that this rezoning application be considered without a Traffic Impact Study and that the need for a Traffic Impact Study be evaluated when a subdivision or land development plan is proposed; and that the current Level of Service "E" of U.S. Route 9 will not change as a result of this application.

The Commission found that on May 18, 2015 the Sussex Conservation District provided comments in the form of a Memorandum referencing that the developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; that no storm flood area is affected; that the scope of the project may dictate the need for off-site drainage improvements; that once the project is underway there will probably be a need for some on-site drainage improvements; and that no tax ditch is affected.

The Commission found that on May 19, 2015 the County Engineering Department Utility Planning Division provided comments in the form of a Memorandum referencing that the site is located in the North Coastal Planning Area; that conformity to the North Coastal Planning Study will be required; that the proposed use is not in an area where the County has a schedule to provide sewer at this time; and that a concept plan is not required.

The Commission found that Bill Schab, Esquire with Schab and Barnett, P.A. was present with Andrew Pennington on behalf of the applicants and stated in their presentation and in response to questions raised by the Commission that the front portion of the property is already zoned C-1 General Commercial; that the site was previously used by Peninsula Masonry contractors; that all of the buildings on the site are within the C-1 General Commercial zoned area; that this request for rezoning is for an extension to the existing commercial zoning to bring the entire property into one zoning classification; that the front portion was rezoned in 1987; that the zoning in the area includes B-1 Neighborhood Business, C-1 General Commercial, CR-1 Commercial Residential with some conditional uses; that the proposed rezoning is consistent with the other uses and zoning in the area; that the site is intended to be used for storage relating to a construction company; that Mr. Pennington is a road equipment dealer; that the storage area

would be used to storage equipment and trucks; and that Mr. Pennington has a similar business operation in Wilmington and hopes to start a similar business in Sussex County.

The Commission found that there were no parties present in support of or in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Burton stated that he would move that the Commission recommend approval of Change in Zone #1774 for John r. and Susan K. Eisenbrey for a change in zone from AR-1 Agricultural Residential to CR-1 Commercial Residential based upon the record made during the public hearing and for the following reasons:

- 1) The entire parcel is 1.75 acres in size. The first 300 feet of the property nearest Route 9 is already zoned C-1 General Commercial.
- 2) Although commercial buildings exist on the C-1 portion of the property, all of the property has been historically used for commercial purposes.
- 3) There are other nearby business and commercial uses and zonings. This rezoning is consistent with the area.
- 4) It is appropriate for the zoning district boundaries to match the properties boundaries.
- 5) No parties appeared in opposition to this application.

Motion by Mr. Burton, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0.

C/Z #1776 – Larry Yoder

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from AR-1 (Agricultural Residential District) to LI-2 (Light Industrial District) for a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 1.079 acres, more or less. The property is located northwest of Shawnee Road (Route 36) 3,439 feet northeast of Road 628 (Coon Den Road) (911 Address: 10682 Shawnee Road, Harrington) Tax Map I.D. 430-3.00-11.01.

The Commission found that the applicant submitted a survey/site plan with his application, and that this proposal is for an expansion of an existing Light Industrial zoned property.

The Commission found that on March 11, 2015 DelDOT provided comments in the form of a Support Facilities Report referencing that a Traffic Impact Study was not recommended, and that the current Level of Service “A” of Shawnee Road will not change as a result of this application.

The Commission found that on May 18, 2015 the Sussex Conservation District provided comments in the form of a memorandum referencing that the developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of any construction; that no storm flood hazard area is affected; that off-site improvements are not likely; that there is a potential for on-site drainage improvements; and that no tax ditch is affected.

The Commission found that on May 19, 2015 the County Engineering Department Utility Planning Division provided comments in the form of a Memorandum referencing that the site is located in the Western Sussex Planning Area #1; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County has a schedule to provide sewer at this time; and that a concept plan is not required.

The Commission found that the applicant or any parties representing the applicant were not present on behalf of this application.

There was a consensus of the Commission to refer the application to the end of the agenda in case the applicant was delayed.

At the conclusion of the agenda, the Chairman again referred to this application.

The Commission again found that the applicant or any parties representing the applicant were not present on behalf of this application.

The Commission found that there were no parties present in support of or in opposition to this application.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be denied since there was no record of any support for the application. Motion carried 4 – 0.

OTHER BUSINESS

Americana Bayside – Route 54

Amended Phase 4 Site Plan (Sunridge Pool)

The Plan is to amend the Final Site Plan of Phase 4 of Americana Bayside to relocate an existing Tiki bar from the east side of the Sunridge clubhouse to the east side of the pool at the corner of Honeysuckle Ter. And Forsythia Dr. American Bayside Phase 4 is part of the MR-RPC application. Tax Parcel ID: 533-19.00-1018.00. No agency approvals are required for the relocation of the amenity.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the amended Final Site Plan of Phase 4 of American Bayside for the relocation of the tiki bar. Motion carried 4-0.

Atlantic Business Properties, LLC – U.S. Route 13

Interpretation of Similarity of Use

Atlantic Business Properties, LLC is seeking an interpretation of a similar use within the LI-2 (Light Industrial District) from the Planning Commission. The company is looking to lease out a portion of an existing manufacturing building for the use of “wood shavings production”. The use of wood shavings production” is not identified as a permitted use within the LI-2 (Light

Industrial District); however, the applicant would like the Planning Commission to determine if it is similar to other uses within the Zoning District. Logs are brought to the site and stored outside. The logs are cut and then brought into the building to be processed into the desired size, dried, packaged then shipped.

Motion by Mr. Ross, seconded by Mr. Burton and carried unanimously to recognize the use of “wood shaving production” as a similar and permitted use within the LI-2 (Light Industrial District). Motion carried 3-0 with Mr. Wheatley abstaining.

Smithfield Acres – Route 17

Consideration to Reinstate a Portion of a Subdivision

Mr. Lank advised the Commission that this application was withdrawn by the Land Surveyor on May 20, 2015.

Subdivision #2014-6 – James Swann III

Final Subdivision – 5 Lot Expansion

This is a final subdivision plan for the creation of five (5) lots to be located off of Cygnet Dr. and Zion Church Rd. (Rt. 20). A portion of the property is zoned AR-1 (Agricultural Residential District). Parcel ID's: 533-12.0-297.00 & 364.00. The property is 3.40 +/- acres. The Planning Commission granted preliminary approval on December 6, 2014. The office is in receipt of DelDOT's letter of no objection. Staff is awaiting approval from the Engineering Department.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the final subdivision pending approval from the Engineering Department. Motion carried 4-0.

Leslie Johnson – Neals School Road

Lot & 50' Easement

This is a minor subdivision for the creation of one (1) lot off of an existing 50 ft. easement (White Dove Ln.). The property is located on the west side of Neals School Rd. (Rd. 553). The property is zoned AR-1 (Agricultural Residential District). Parcel ID: 531-9.00-23.00. The current parcel utilizes an existing 50 ft. easement. The new parcel will also use the 50 ft. easement for access and frontage. A survey of the proposed minor subdivision shall be submitted prior to recordation for review by staff. Staff is awaiting DelDOT Approval Letter.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the preliminary plan and allow staff approval of the final plan upon receipt of other agency approvals. Motion carried 4-0.

Rehoboth Shores – Area 2 – Long Neck Road

Campground/Manufactured Home Park Revision

This is a Preliminary Site Plan for the conversion of a campground into a mobile home lots. The property is located on the east side of Long Neck Rd. The property is zoned AR-1 (Agricultural Residential District). Parcel ID: 234-24.00-35.00. This application is for a portion of the property. The property is a mixture of mobile home lots and campground lots. This plan will allow for the establishment of 57 mobile home lots. Staff is awaiting approvals from the other reviewing agencies.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the preliminary site plan for the conversion of campground lots into 57 mobile home lots. Motion carried 4-0.

Overlook 2 – MR-RPC – Bayville Road

Phase 2 Preliminary Plan – 5 Units

This is a preliminary subdivision for Phase 2 of the Overlook. The phase of the subdivision will create five (5) townhouse units. The units will be located on the west side of Watchtower Dr. The property is zoned MR (Medium Residential District) and is a RPC. The overall subdivision has 173 dwelling units. The subdivision is a mixture of single family and townhouses. Parcel ID: 533-20.00-7.00. Staff is awaiting approvals from the other reviewing agencies.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the preliminary subdivision plan and allow staff to approve the final subdivision plan subject to receipt of other agency approvals. Motion carried 4-0.

ADDITIONAL BUSINESS

Mr. Lank provided the Commission with a letter from James A. Fuqua, Jr., Esquire with Fuqua, Yori and Willard, P.A. in reference to C/Z #1768 for Convergence Communities relating to the amenities discussed during the public hearing on April 9, 2015, and advised the Commission that the C/Z #1768 would be placed on the next agenda for introduction of the letter and then to allow the receipt of written comments relating to the letter for 14 days.

Mr. Lank provided the Commission with a copy of a Motion and Legal Memorandum for Reargument received from Gerald A. Lechlitter relating to the Harbor Point Subdivision application near Lewes.

Meeting Adjourned at 7:22 p.m.